

MONTANA SMART GROWTH COALITION

P.O. Box 543, Helena, Montana 59624

March 29, 2011

**TESTIMONY ON SB 379 (Olson)
Generally Revising County Zoning Laws**

My name is Dick Thweatt. I am vice-chair of the Montana Smart Growth Coalition, which for over 10 years has worked constructively with all stakeholders to improve Montana's land use laws and communities. I am also a lawyer, Helena City Commissioner, and citizen of Lewis & Clark County who has volunteered many hours to help our county develop fair and reasonable zoning regulations. SB 379 would frustrate all of my hopes and my hard work, and that of many others.

On behalf of myself, my neighbors, and the Montana Smart Growth Coalition, I **ask you to recommend that SB 379 SHOULD NOT PASS.**

SB379 is premature. It will not resolve the constitutional issues with zoning protests now before the Montana Supreme Court. The amicus brief in that case says:

"Local government efforts to protect health, safety and general welfare must not be vetoed by the special interests of a potentially very small minority. This minority may be comprised of a single, non-resident corporate landowner, and the sole requirement for the protest provision is land ownership. If the acreage of the land owned is large enough, a single owner may veto zoning that the residents and county government believe will protect the health, safety and general welfare of the county's residents." This violates the constitutional guarantee of equal protection.

No one can predict how the Court will rule, so we cannot know today how to fix our county zoning laws. Let an interim committee devise a fix *after* the Court rules.

SB379 is legally flawed.

- Page 5, Lines 10-11 (new section 7.1.c) as amended: This provision is ambiguous. Does the required analysis of deprivation of uses pertain to the lands of all protesters in the aggregate, or to individual parcels?
- Page 6, Lines 7-8 (new section 8.3) as amended: This does not allow the county commission the discretion to reject alternatives or mitigating modifications to the proposed zoning regulations because they do not protect the public interest adequately. If the alternative protects the public interests at all, the county *must* incorporate them.
- Page 6, Lines 14-18 (new section 9): The notice of public hearing must include a summary of the evidence of economic impact and of less restrictive means. But there is no requirement that any such evidence be submitted prior to the hearing.

The provision for override of protest by the county commission is a sham.

The process would be so difficult, no county commission would attempt it.

- The super majority requirement sets the bar too high.
- The prescriptive requirements for findings set the county up for successful legal

- challenges no matter how hard they might try to comply.
- The economic analysis would be based on sheer speculation about what uses may be economically viable.

Montana counties need zoning.

- Zoning provides predictability for landowners, developers, homeowners, and government.
- Zoning allows counties, school districts, and others to plan investments in infrastructure like roads and schools.
- Zoning is the only effective tool to guide growth into orderly development patterns that can be *efficiently* provided with government services.
- Zoning can provide opportunities for all landowners to profitably develop their land through cluster developments that conserve open space which enhances the value of the residential lots.
- Zoning protects and enhances property values. See the map of Gallatin County that shows the correlation between zoning districts and high property values.
- Zoning can keep Montana Montana. The maps show that, if we can't guide growth through zoning, our valleys will be carpeted with homes, and the landscapes that attract talented people to Montana will be destroyed.

Zoning can keep taxes low and the quality of local government services high. A 2009 fiscal impact analysis in Gallatin County proves that zoning can save taxpayers money. An abstract of the study says:

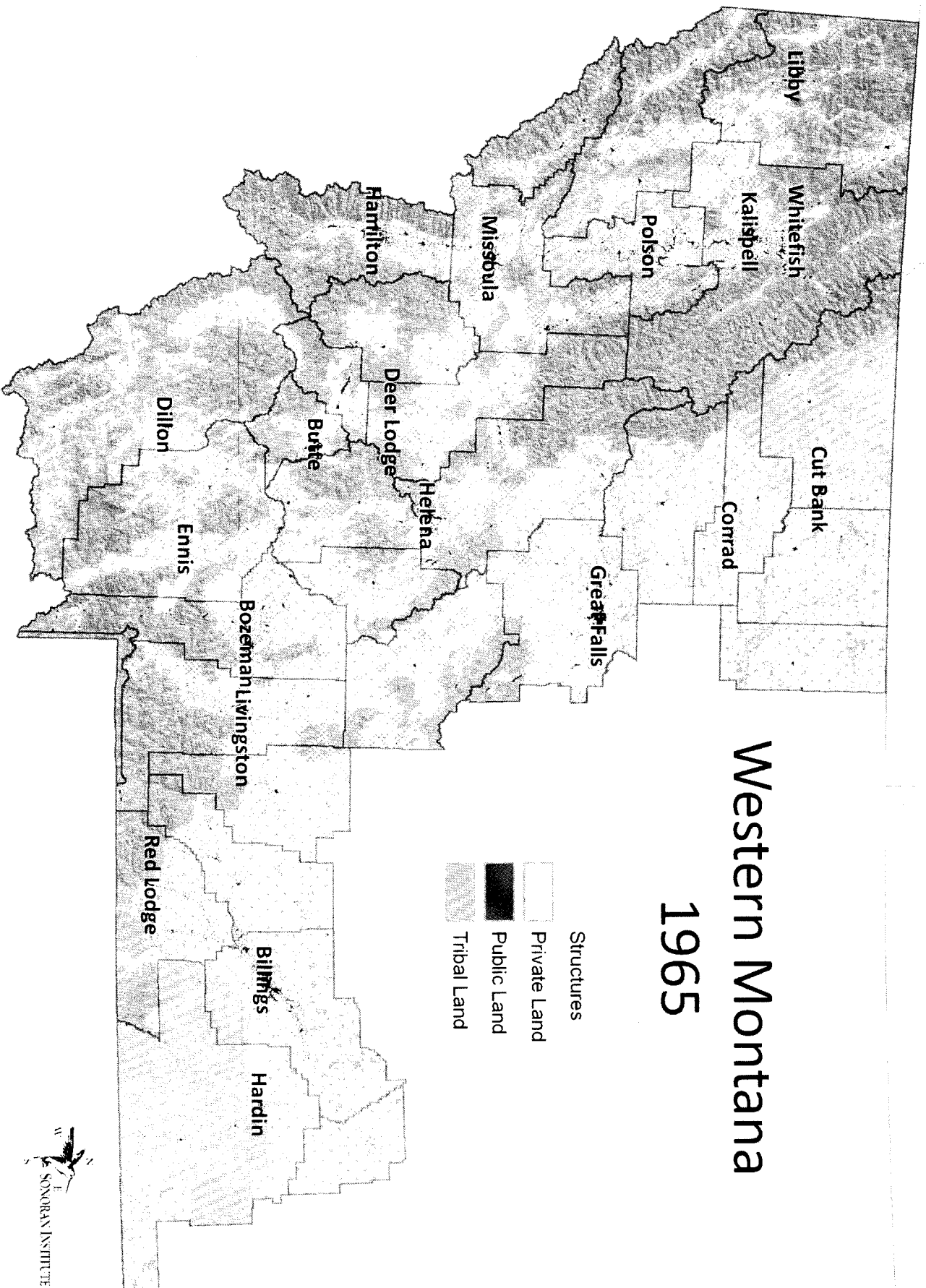
"The study compares the cost to Gallatin County taxpayers of providing road and sheriff services under two future growth scenarios. The first scenario, the "business-as-usual" scenario, continues recent sprawling growth patterns; the second, an "alternative" scenario, simulates the much more compact growth patterns that would result if the County adopts its proposed countywide zoning ordinance. The ordinance would direct growth into existing towns and limit it in rural areas using a variety of incentives and regulations. **The study found that the alternative scenario would result in a cost savings to taxpayers of nearly \$54 million from 2010 – 2025 for road and sheriff services.** This study echoes the findings of a similar study that the Sonoran Institute produced for Beaverhead County, Montana . . ." (Emphasis added) Sonoran Institute and Rural Planning Institute, Gallatin County Fiscal Impact Analysis 2009, online at: <http://www.sonoraninstitute.org/where-we-work/northern-rockies/high-divide/gallatin-county.html>

Before you vote on this bill, please read this study and ask yourself if SB379 would really be in the best interests of your constituents and of Montana.

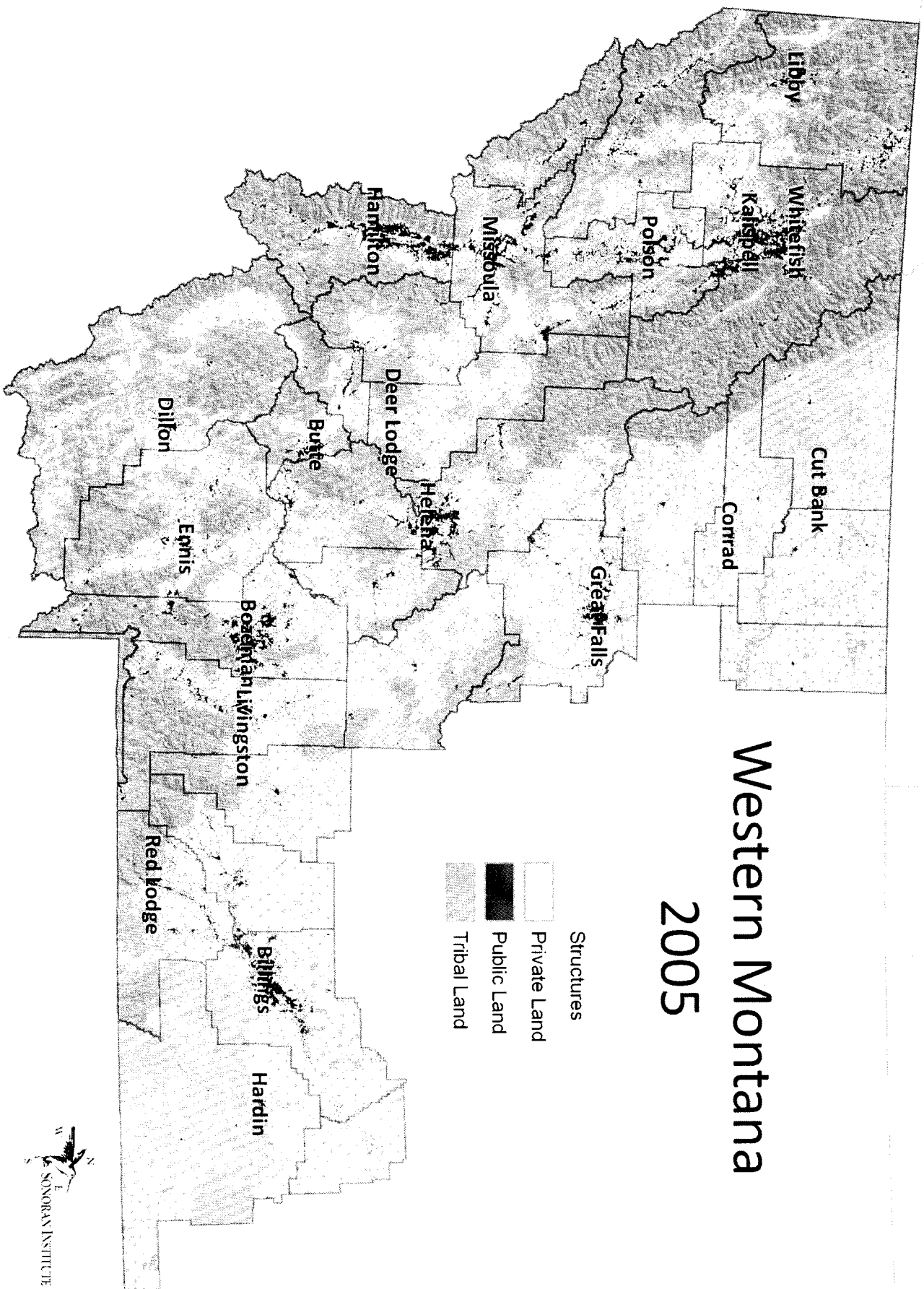
Please vote NO on SB379.

The Montana Smart Growth Coalition (MSGC) is a coalition of forty organizations formed in 1999 for the purpose of promoting economically efficient and environmentally sustainable development in the state of Montana. For over ten years, MSGC has worked constructively with local governments and the Montana Legislature and members of the development community to improve Montana's land use laws and our communities.

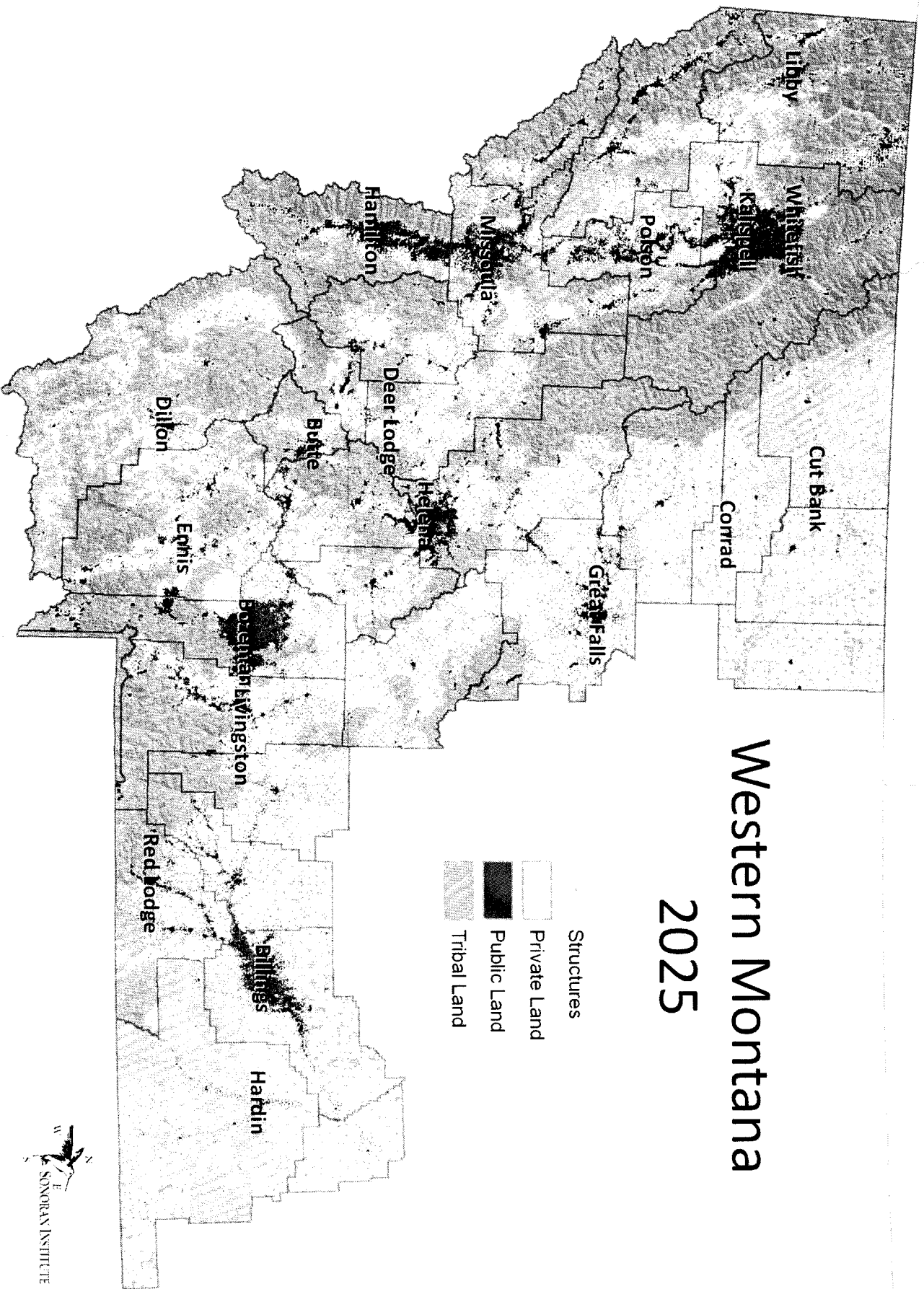
Western Montana 1965



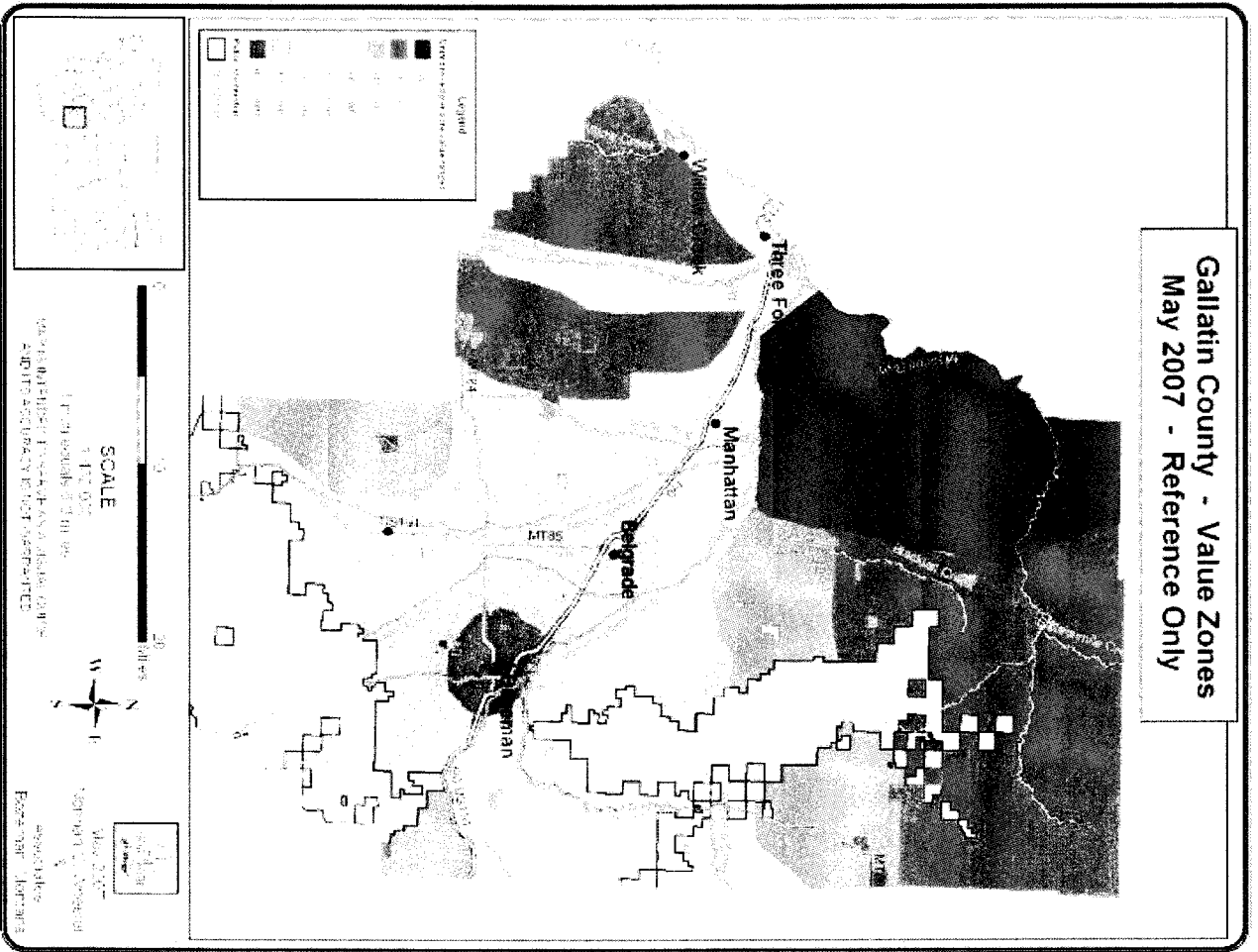
Western Montana 2005



Western Montana 2025



Gallatin County - Value Zones
May 2007 - Reference Only



Gallatin Co.
Property
Values

[illegible]

Zaring District

